Briefing Paper

MFR2025-139

Ministry for Regulation
Te Manatū Waeture

To	**Hon David Seymour, Minister for Regulation**		
Title	**Regulatory Standards Bill: Initial briefing to FEC and response to the RRC**	Number	**MFR2025-139**
Date	**28 May 2025**	Priority:	**High**
Action Sought	**Agree to the recommendations in the paper**	Due Date	**30 May 2025**
Contact Person	**Pip van der Scheer, Manager, Regulatory Management System**	Phone	s 9(2)(a)
Contact Person	**Elisa Eckford, Lead Advisor, Policy**	Phone	s 9(2)(a)
Attachments	**Yes (Annexes 1 and 2)**	Security Level	**IN CONFIDENCE**

Purpose

1. This briefing provides you with:
   - the Ministry's draft initial briefing to the Finance and Expenditure Committee (FEC)
   - the Ministry's proposed responses to questions from the Regulations Review Committee (RRC).

Recommended action

2. We recommend that you:

   a **note** the draft of the Ministry's initial briefing attached as Annex 1, which we intend to provide to FEC on Friday 30 May — *Noted*

   b agree that, to ensure we can respond to FEC's requests for information in a timely way: — *Agree / Disagree*

      i. where the information requested is factual, and no policy decision is required, we would supply our responses to your office for awareness

ii. where a policy clarification or decision is required, we would provide advice and seek agreement from you

c **note** the Ministry's responses to the RRC's questions attached as Annex 2 — *Noted*

d **agree** that the Ministry for Regulation release this briefing at an appropriate time following consideration by the relevant select committees, with any information needing to be withheld done so in line with the provisions of the Official Information Act 1982. — *Agree / Disagree*

s 9(2)(a) [redacted]

Pip van der Scheer
Manager, Regulatory Management System
Ministry for Regulation
Date: 28 May 2025

Hon David Seymour
Minister for Regulation

Date:

Background

3. On 19 May 2025, the House referred the Regulatory Standards Bill to the Finance and Expenditure Committee (FEC).

4. s 18(c)(ii) [redacted]

Initial briefing to the Finance and Expenditure Committee

5. The committee clerks have confirmed the Ministry for Regulation will need to provide FEC with a written initial briefing by 30 May 2025, with an oral briefing from the Ministry likely to be scheduled on Wednesday 4 June 2025.

6. A draft of the initial briefing is attached for your awareness as **Annex 1**. It focuses on providing a factual overview of the objectives of the Bill and its key provisions.

7. We understand that FEC is meeting for the first time to discuss a timeline for their consideration of the Bill on Thursday 29 May. We anticipate we will be able to provide your office with a clearer timeline of the select committee process following this meeting. We note that there may still be some factors that could impact on those timelines (e.g. the number of submissions and amount of time needed for the other business FEC is dealing with).

8. We anticipate we will need to respond to requests for information from FEC quickly as it considers the Bill. As discussed with your advisors today, to keep you informed we recommend:
   - where the information requested is factual, and no policy decision is required, we would supply our responses to your office for awareness
   - where a policy clarification or decision is required, we would provide advice and seek agreement from you.

Responses to the Regulations Review Committee

9. RRC has requested responses from the Ministry for Regulation to a set of questions relating to the Bill.

10. Those questions and the Ministry's proposed responses to them are attached as **Annex 2** for your awareness.

11. The responses are due back to the RRC by 30 May 2025.

Ministry for Regulation
Te Manatū Waeture

Regulatory Standards Bill: Initial Briefing to the Finance and Expenditure Committee

4 June 2025

Contents

Introduction

1. This initial briefing provides the Finance and Expenditure Committee with an overview of the Regulatory Standards Bill, including its purpose, scope and key provisions.

2. The Bill is a Government Bill that:

   - establishes a set of regulatory responsibility principles that relate to the content and design of legislation, and the process for making it
   - sets requirements for responsible agencies to assess most legislation to identify inconsistencies with the principles, and for Ministers to provide reasons for those inconsistences
   - establishes a ministerially appointed Regulatory Standards Board to independently investigate legislation to identify inconsistencies
   - establishes some expectations and powers to promote regulatory stewardship and support the Ministry for Regulation in its broader regulatory oversight[1] role.

3. The Bill provides that the Act binds the Crown (cl 7).

Purpose of the Bill

4. The overall policy objective of the Bill is to reduce the amount of unnecessary and poor-quality legislation by increasing transparency and making it clearer where legislation does not meet certain standards.

5. It aims to:

   - promote the accountability of the Executive to Parliament for developing high-quality legislation and exercising stewardship over regulatory systems[2]
   - support Parliament's ability to scrutinise Government Bills and amendments
   - support Parliament in overseeing and controlling the use of delegated powers to make legislation (cl 3(1)).

[1] The Bill does not define "regulatory oversight", but it involves the establishment of mechanisms and institutions to oversee, support, and implement regulatory policy to promote better regulatory quality.
[2] The Bill does not define "regulatory systems", but they comprise a set of rules, organisations and activities that share a common policy objective (e.g. health and safety). Regulatory systems are not limited to primary and secondary legislation, but include a range of activities including the delivery of services, education, monitoring and enforcement, and dispute resolution. The Government is responsible for around 180-200 regulatory systems.

Scope and effect

6. Consistent with the Bill's purpose, the intent is that the Bill supports and strengthens Parliament in its role, including its ability to hold the Executive to account.

7. The purposes of the Bill are only given effect in the ways explicitly specified in the Bill – i.e. by the establishment of principles and a Regulatory Standards Board; setting requirements for identifying and reporting on inconsistencies with the principles; setting regulatory stewardship responsibilities for public agencies; and setting specific requirements in relation to the Ministry for Regulation's broader regulatory oversight role (cl 3(2)).

8. There is no intent in the Bill for the principles or other aspects of the Bill to be applied or considered in any other circumstances.

9. Nothing in the Bill:

    - constrains Parliament's ability or any other existing power to make legislation (cl 25(a))
    - impacts on the validity or operation of any existing legislation (cl 25(b))
    - confers a legal right or obligation that can be enforced by the courts – with the exception of powers that the Bill provides the Ministry to request information for specific purposes (cl 24).

10. More specifically, nothing in the Bill requires legislation to be consistent with the principles, prevents inconsistent legislation from being made, or empowers inconsistent legislation to be overturned after it is made.

Context

11. The central problem the Bill seeks to address is a lack of incentives on responsible Ministers and agencies for robust scrutiny, monitoring and review of legislation.

12. The Bill seeks to strengthen these incentives by increasing transparency about:

    - whether new or existing legislation is inconsistent with selected principles of responsible regulation
    - why legislation that is inconsistent with these principles is being proceeded with, or why it remains in place
    - who is responsible for inconsistent legislation.

13. The rationale is that this transparency will incentivise Ministers and agencies to:

- ensure the content and design of, and the process for making new legislation is consistent with the principles
- put greater efforts into reviewing existing legislation on the same lines.

14. To complement its focus on improving the quality of legislation through increased transparency, the Bill also aims to:

- reinforce government departments' responsibility for stewarding regulatory systems for which they are responsible
- set expectations and requirements for the Ministry for Regulation and other agencies to support the Ministry's broader roles to oversee the Regulatory Management System[3] and carry out regulatory reviews.

15. The Bill is related to the Regulatory Standards Bill developed by the government-appointed Regulatory Responsibility Taskforce in 2009, which was eventually adapted and introduced as a private member's bill in 2021. Key differences between the current Bill and the 2021 Bill include:

- removal of new interpretive and declaratory roles for the courts, with the latter effectively replaced by a Regulatory Standards Board
- removal of a referendum as a mechanism to bring the Bill into force
- amendments to the principles, and the provision of more details about the way inconsistencies with the principles would be identified and published.

Key provisions of the Bill

Principles of responsible regulation

16. The Bill establishes a set of selected regulatory responsibility principles that focus on the protection of individual rights and liberties, as well as good lawmaking processes (cl 8). These principles are intended to set a benchmark for the quality of legislation.

17. Specific principles cover:

- the rule of law
- liberties
- taking of property
- taxes, fees, and levies

[3] The Bill does not define "regulatory management system", but it is the set of policies, institutions, processes and tools employed by central government to pursue and maintain good quality regulation

- the role of courts
- good law-making processes including consultation, options analysis and cost-benefit analysis.

Identification and reporting of inconsistencies

Overview of requirements

18. The intention of the Bill is to ensure that transparent assessments of whether proposed or existing legislation is consistent with the principles are carried out for most primary and secondary legislation over time – and that reasons are provided for any inconsistencies.

19. The Bill provides for Chief Executives of responsible agencies[4] to produce consistency assessment statements (CASs) in relation to proposed or existing legislation (both primary and secondary). These CASs:

    - confirm that the agency has reviewed the legislation and the process of developing it with the regulatory responsibility principles
    - summarise any inconsistency with the principles (cl 5).

20. Chief Executives must act independently from the responsible Minister when producing a CAS (cl 23(1)).

21. Where an inconsistency is identified, the Bill requires the responsible Minister (or maker of secondary legislation where not a Minister) to explain the reasons for that inconsistency.

22. Ministers, as well as makers of secondary legislation, must publish or present to the House of Representatives the results of those assessments and explanations.

23. The Bill does not require any specific actions to be taken to remedy an identified inconsistency (e.g. requiring the payment of compensation in the event of impairment of property). The purpose of the CAS is transparency.

24. In addition, the Bill does not set any requirements in relation to the reasons provided by Ministers for inconsistencies with the principles (cl 26).

Requirements for proposed legislation

25. The intention of the Bill is that proposed legislation is assessed for any inconsistencies with the principles and that these assessments, along with the reasons for any inconsistencies identified, are made available to the House and/or to the public.

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[4] The Bill defines a responsible agency as the agency primarily responsible for developing a Bill or amendment, or the administering agency for an Act or secondary legislation (cl 5).

26. The Bill requires that the Minister responsible for a Government Bill must ensure that the explanatory note to that Government Bill includes, or links to, a CAS, along with a statement by the Minister explaining the reasons for any inconsistency (cl 9).

27. The Bill also sets the same requirements for:

- Government amendments to a bill (cl 11) unless the Minister for Regulation's view is that the amendment would not materially change the bill (cl 12(1)(c)) and they make a statement to this effect (cl 12(3)). However, if it is not practical to complete the required statements in the time available, the responsible Minister may present them to the House as soon as reasonably practicable following consideration of the amendment (cl 12(1)(b) and 12(2)).
- proposed secondary legislation – with the assessment of consistency done by the Chief Executive of the administering agency and the explanations for any inconsistency provided by the responsible Minister (or other maker) (cl 13).

Requirements for existing legislation

28. The intention of the Bill is that the majority of existing primary and secondary legislation is reviewed over time, to help identify and explain inconsistencies with the principles across New Zealand's stock of legislation.

29. The Bill requires:

- responsible agencies to develop and periodically report against plans to review the consistency of existing legislation (both primary and secondary) (cl 17)
- responsible agencies to provide a CAS to the responsible Minister following each review of an Act (cl 21(2))
- responsible Ministers to present a CAS for a reviewed Act to the House, along with a statement setting out reasons for any inconsistency identified, and any proposed actions to remedy the inconsistency (cl 21(3))
- responsible agencies to publish a CAS on their website following each review of existing secondary legislation (cl 22(2)(a))
- responsible agencies to publish a CAS for reviewed secondary legislation on their websites, along with a statement from the maker setting out reasons for any inconsistency identified, and any proposed actions to remedy the inconsistency (cl 22(2)(b)).

Exemptions and exclusions

30. The Bill does not require completion of CASs for all legislation.

31. The requirements for CASs (and for review of existing legislation) apply only to legislation and Government Bills (cl 5), including Member's bills that have become

Acts. The requirements also explicitly exclude some bills and legislation, for instance:

- bills and legislation that provide for full and final Treaty settlements, the Marine and Coastal Area (Takutai Moana) Act 2011 and the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019, and any associated secondary legislation - to avoid creating uncertainty in relation to existing or future Treaty settlements (cl 10(1)(f), 14(1)(a), 18(1)(a), 19(2)(a))
- Imprest Supply Bills, Appropriation Bills, or Statutes Amendment Bills and some other bills or legislation that are technical or administrative in nature (cl10(1)(a)-(e))
- secondary legislation made by the Chief of the Defence Force, the Speaker of the House or the House, or that is rules of court or made by any judicial officer - where it would be inappropriate for secondary legislation to come under further executive scrutiny (cl 14(1)(b)-(e)).

32. The Bill allows the Minister for Regulation to issue notices exempting further bills and legislation from the new requirements – for instance where it is identified that it would be inefficient or inappropriate for CAS requirements to apply. These notices must be approved by the House (cl 10(2)-(3), cl 14(2)-(3), and 19(3)-(4)).

33. Requirements for CASs and review do not apply to existing secondary legislation unless that legislation has been:

- made, amended or replaced after the Bill has entered into force; or
- brought in by a notice issued by the Minister for Regulation, and this notice approved by the House (cl 19(1)).

34. This is intended to enable existing secondary legislation to be brought into the scheme over time.

35. To ensure that exclusions and exemptions are consistently applied, the Bill also excludes from CAS requirements:

- amendments to excluded bills (cl 12(1)(a))
- secondary legislation made under excluded or exempted Acts (cl 14(1)(a).

36. In addition, Acts and secondary legislation excluded from CAS requirements are also excluded from review requirements (cl 18(a) and 19(2)(a)).

Guidance

37. The Bill provides for guidance to be issued to set out more detail about how the principles should be applied, and how consistency assessments and review of legislation should be carried out by agencies (cl 27).

38. The guidance would be issued jointly by the Attorney-General and Minister for Regulation to reflect the Attorney-General's role in relation to legislative quality.

Regulatory Standards Board

39. The Bill establishes a Regulatory Standards Board (cl 28).

40. The Board is intended to provide an independent view on the consistency of legislation, including in response to compliants. It is intended to provide an incentive for Ministers and agencies to ensure robust consistency assessments of legislation for which they are responsible.

41. The Board would comprise between five and seven members (cl 37), appointed by the Minister for Regulation based on the Minister's assessment of whether appointees have the appropriate knowledge, skills, and experience (cl 38).

42. The Bill only enables the Board to investigate legislation that is subject to CAS and review requirements - i.e. the same exclusions that apply to these requirements would also apply to the Board's scope (cl 33(1)). The Board cannot investigate decisions in specific cases (cl 33(2)).

43. The Bill sets out two functions for the Board:

    - to consider consistency accountability statements of bills as introduced into the House of Representatives, and provide a report to a select committee on its findings
    - to carry out inquiries into whether Acts or secondary legislation are inconsistent with the principles, and report to the Minister for Regulation and responsible Minister on its findings (cl 29).

44. The Bill does not specify how the Board would decide what legislation to inquire into – it could carry out inquiries in response to a complaint, at the request of the Minister, or on its own accord.

45. The Bill does not allow the Board to hold hearings, and it must carry out its functions on the basis of written information (cl 30).

46. Following an inquiry, the Board must give its final report to any complainant, the Chief Executive of the responsible agency, the Minister for Regulation, and the responsible Minister (cl 35). Beyond the Ministry for Regulation publishing the inquiry report (cl 36), the Bill requires no further actions in relation to the Board's recommendations.

47. The Board must also provide an annual report to the Minister for Regulation with information about its activities and a summary of the Board's reports, which the Minister must present to the House (cl 39).

48. The Bill provides for members to serve a three-year term with the possibility of reappointment. The Bill requires members to be impartial, and act in good faith and with reasonable care, diligence, and skill (Schedule 2).

49. The Bill requires the Ministry for Regulation to support the Board by:

- establishing and maintaining a system for receiving and dealing with complaints that legislation is inconsistent (cl 32)
- publishing inquiry reports (cl 36)
- providing resources and administrative support (Schedule 2).

50. Schedule 2 of the Bill sets out a number of further detailed provisions for the Board, including in relation to:

- the term, removal and resignation of members
- duties of members
- Board procedure
- remuneration.

Regulatory oversight

51. The Bill includes provisions to strengthen regulatory oversight and support regulatory stewardship. It:

- requires the Ministry for Regulation to periodically report on the overall state of the regulatory management system (cl 16)
- establishes a responsibility for departmental Chief Executives to proactively engage in stewardship of regulatory systems – ensuring that those systems are properly governed and regularly reviewed so they remain fit for purpose (cl 15)
- sets requirements for the Ministry's reports to the Minister for Regulation on the results of regulatory reviews, and for the Minister to present these reports to the House along with the Government's response (cl 41)
- provides information-gathering powers for the Ministry to support its reporting on the regulatory management system (cl 42), and the efficient and effective conduct of regulatory reviews undertaken by the Ministry (cl 43).

52. The information-gathering powers set out in the Bill enable the Chief Executive of the Ministry for Regulation to require information relating to regulatory reviews to be provided on request from:

- any entity that makes or administers secondary legislation, including local government

- any entity that undertakes a function imposed by legislation, for example the Reserve Bank and statutory occupational licensing bodies
- any entity contracted by the government to support the delivery of a function imposed by legislation, also known as third-party service providers (cl 43(2)).

53. The Bill provides some parameters on when the powers can be used in relation to particular agencies, and specifies that the powers would not override prohibitions or restrictions on the sharing of information already set down in legislation (cl 44 to 46):
    - The powers do not apply to the House or Speaker, an Office of Parliament, the Office of the Clerk, or the Parliamentary Service.
    - A request for information to an agency outside of the public service can only be made following consultation with the relevant chief executive responsible for the administration of the relevant legislation.
    - A request can only be made to a person contracted to a public service agency (the principal agency) if the request has first been made to the principal agency and they have been unable to supply it within a reasonable time, or the request is made jointly between the Ministry for Regulation and the principal agency.
54. The Bill provides that the information-gathering powers above could be enforced via court order if required, a breach of which would constitute contempt of court (cl 47). This is to avoid automatic application of section 107 of the Crimes Act 1961, which specifies a penalty of imprisonment for a term not exceeding one year for contravening legislation where no other penalty applies.

Other provisions

55. The Bill provides for the Act to come into force on 1 January 2026, with the exception of CAS and review requirements which would be brought in via Order in Council, but commence no later than six months after the date the Bill comes into force (cl 2). This is intended to allow time for the development and testing of guidance, to enable time to exclude any further relevant types of legislation from CAS or review requirements via the issuing of a notice, and to ensure agencies understand and can prepare to meet the new requirements.

Other matters

Implementation

56. Some aspects of implementing the Bill have already been noted or agreed by Cabinet, including that:

- the guidance issued jointly by the Attorney-General and Minister for Regulation would be developed by the Ministry for Regulation and the Parliamentary Counsel Office in consultation with agencies.
- there would be a process in place before the Bill came into effect to identify further bills or legislation that should be excluded from CAS or review requirements via the issuing of a notice. As part of this, Ministry for Regulation officials would work with other agencies to identify other bills or legislation that should be exempted
- existing Cabinet-mandated provisions for disclosure statements and regulatory impact analysis requirements would need to be streamlined and aligned to remove any duplication with consistency assessment requirements. The Minister for Regulation intends to report back to Cabinet on proposed changes to the Cabinet Office Circulars for Disclosure Requirements for Government Legislation [CO (13) 3] and Impact Analysis Requirements [CO (24) 7], to ensure alignment with the requirements in this Bill.

57. The Ministry's understanding is that Part 4 of the Legislation Act that sets out provisions relating to disclosure statements is proposed to be repealed as part of the review of the Legislation Act that is currently underway.
58. The Ministry's Regulatory Impact Statement[5] has further details on implementation considerations as well as indicative costs.

Published material and key documents

59. The Ministry for Regulation has proactively released all Cabinet papers related to the Bill, as well as key briefings. These documents can be found on the Ministry for Regulation's website.

[5] See https://www.regulation.govt.nz/our-work/regulatory-impact-statements/regulatory-impact-statement-proposed-regulatory-standards-bill/